

## IN THE CLAIMS

Please amend the claim as follows and a clean copy is enclosed.

Claim 7. (Currently amended) A method to reduce the possibility of injury to whales or other cetaceans, comprising in any order

- (a) attaching at least one breakaway link [and] near at least one floating buoy attached to underwater gear;
- (b) putting said underwater gear into water where whales or other cetaceans can exist, wherein the at least one breakaway link exhibits material failure when subjected to a load greater than 50 pounds but less than 11,300 pounds, whereby the floating buoy is separated from the gear, and whereby the possibility of injury to whales or other cetaceans is reduced.

### **Telephone Interview Summary**

The undersigned attorney thanks the Examiner for the helpful telephone interview held on November 25, 2003 during which the Office Action of August 27, 2003, the references cited therein, and the above amendment were discussed. Specifically, the Examiner acknowledged that there was an error on page 4 of the August 27, 2003 Office Action where claim 1 should have been identified as allowed. In addition, the Examiner confirmed that the previous rejections based on new matter and/or recapture were overcome. We also discussed that the rejection on page 2 on Kahng, said to provide a method of releasing fish, was now moot and or irrelevant since only claim 2 was directed to a method for the lease of at least one cetacean and claim 2 has been withdrawn. The Examiner agreed. It was further agreed that Kahng would not teach or provide a method to reduce injury or the possibility of injury to whales or other cetaceans. We further discussed the proposed combination of the breakaway device of Kahng and the buoy of Collins and it was noted with agreement that such a combination would if implemented increase and not reduce the likelihood of injury to a whale because it would constitute more, not less, gear to be dragged by the struggling animal. Finally, we discussed an amendment addressing the Examiner's statement on page 4: "However, no method steps are recited that directly deal with reducing the possibility of injury to whales or other cetaceans." The undersigned attorney recited during the telephone interview a proposed amendment to claim 7 which is presented herein above and in the enclosed clean copy, which amendment now does recite method steps that directly deal with reducing the possibility of injury to whales or other cetaceans. The Examiner urged the undersigned attorney to make these amendments and arguments in this Response.

### **Rejection of claims 3-6 under 35 U.S.C. 103**

The Examiner has rejected claims 3-6 under 35 U.S.C. 103 as being unpatentable over Kahng. As noted above, the Examiner acknowledged in the telephone interview of November 25, 2003 that Kahng provides a method of releasing fish, the subject of claim 2 now withdrawn, but not a method for reducing the injury or possibility of injury to whales or other cetaceans as currently claimed. As discussed in the telephone interview, if a whale became entangled in the gear shown in Kahng Fig 4, even if the breakaway device failed as intended, the whale would still be entangled in the gear, could not swim freely, and would drown. The whale would only be released from the hook (20) or the sinker (25), but not the remaining extensive gear. Thus, Kahng does not render obvious a method for reducing injury to whales or other cetaceans.

### **Rejection of claim 7 under 35 U.S.C. 103**

The Examiner has rejected claim 7 as being unpatentable over Kahng in view of Collins. As discussed above, during the telephone interview of November 27, 2003 the combination of the breakaway device of Kahng and the buoy of Collins would make a much more cumbersome fishing gear assembly for the struggling whale to drag around, even if the breakaway device failed as intended and depicted in Fig 4 of Kahng. Such a combination would NOT reduce the possibility of injury as claimed in presently amended claim 7, but would INCREASE the possibility.

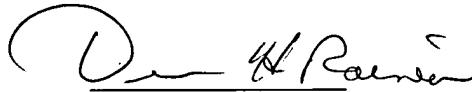
Claim 7 has been amended herein with the added recitation “whereby the floating buoy is separated from the gear, and whereby the possibility of injury to whales or other cetaceans is reduced.” Also amended is the location of the breakaway device being “near” the buoy. It is respectfully submitted that this amendment overcomes the Examiner’s

statement that no method steps are recited that directly deal with reducing the possibility of injury to whales or other cetaceans. This amendment is not new matter and finds support in the specification at least at Figure 2 and column 4, lines 55-65, and column 1, lines 56-60, and column 2, lines 36-38.

Therefore, it is respectfully submitted that claims 1 and 3-6 as filed and claim 7 as amended herein are in condition for prompt allowance which is requested.

As this Response is submitted within the shortened statutory period, it is believed that no additional fees are due. In the event that the undersigned is mistaken in his calculations, an appropriate extension of time to respond is most respectfully requested and the Commissioner is authorized to bill any additional fees to deposit account No. 501890.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Dennis H. Rainear", is written over a horizontal line.

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